

ESTTA Tracking number: **ESTTA357183**

Filing date: **07/09/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Ms. Negin Niknafs		
Entity	Individual	Citizenship	UNITED STATES
Address	Marbella Plaza 31115 Rancho Viejo Road San Juan Capistrano, CA 92675 UNITED STATES		

Attorney information	Francie R. Gorowitz Rosenfeld, Meyer & Susman, LLP 9061 Wilshire Blvd. Suite 710 Beverly Hills, CA 90210 UNITED STATES fgorowitz@rmslaw.com, trademark@rmslaw.com Phone:310 246-3205
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Registration Subject to Cancellation

Registration No	3679578	Registration date	09/08/2009
Registrant	Behr, Valery Pine 531 Cherry Street Boulder City, NV 89005 UNITED STATES		

Goods/Services Subject to Cancellation

Class 039. First Use: 2009/01/01 First Use In Commerce: 2009/01/01
All goods and services in the class are cancelled, namely: Food delivery

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77678437	Application Date	02/25/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THE HOT LUNCH LADY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2008/11/01 First Use In Commerce: 2008/11/01 Catering of food and drinks; Preparation of food and beverages
Attachments	77678437#TMSN.jpeg (1 page)(bytes) THE LUNCH LADY - Petition to Cancel.pdf (4 pages)(89870 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Francie R. Gorowitz/
Name	Francie R. Gorowitz
Date	07/09/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF REGISTRATION NO. 3,679,578
for the mark THE LUNCH LADY registered September 8, 2009

Negin Niknafs DBA The Hot Lunch Lady)	Cancellation No.
)	
Petitioner,)	
)	
v.)	
)	
Valery Pine Behr)	
)	
Respondent.)	
<hr style="width: 40%; margin-left: 0;"/>)	

PETITION FOR CANCELLATION

Negin Niknafs is a United States citizen, doing business as The Hot Lunch Lady, with a principal place of business at Marbella Plaza, 31115 Rancho Viejo Road, San Juan Capistrano, California 92675. Petitioner believes that she is damaged by the registration of the mark THE LUNCH LADY and hereby petitions to cancel the above registration.

As grounds for cancellation, it is alleged that:

1. Petitioner is the owner of Application Serial Number 77/678437 for the mark, THE HOT LUNCH LADY for "catering of food and drinks; and preparation of food and drinks," which was filed on February 25, 2009 on the basis of use in commerce since at least as early as November 1, 2008.

2. Registration No. 3,679,578 is for the mark THE LUNCH LADY for “food delivery.”

The registration, which issued on September 8, 2009, is owned by Valery Pine Behr.

The underlying application, Ser. No. 77/678412 was filed on February 25, 2009.

3. As asserted in her application, Respondent first used the mark THE LUNCH LADY in connection with food delivery services on January 1, 2009.

4. Petitioner has been using the mark THE HOT LUNCH LADY in connection with her services since at least as early as November 1, 2009.

5. Registration Number 3,679,578 was cited as a bar to registration of Petitioner’s application, Serial Number 77/678437 pursuant to Section 2(d) of the Trademark Act.

6. Petitioner’s use of the mark THE HOT LUNCH LADY predates Respondent’s use of the mark THE LUNCH LADY.

7. Petitioner’s rights to the mark THE HOT LUNCH LADY precede any rights Respondent may have in the mark THE LUNCH LADY.

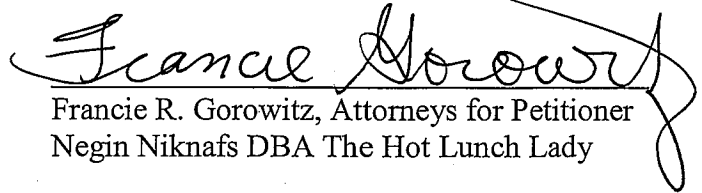
8. Petitioner is damaged by Respondent’s registration of the mark THE LUNCH LADY for “food delivery.”

9. Since Petitioner has prior rights in the mark THE HOT LUNCH LADY and Respondent’s registration for the mark THE LUNCH LADY is acting as a bar to Petitioner’s registration of the mark THE HOT LUNCH LADY, Registration No. 3,679,578 should be cancelled.

WHEREFORE, Petitioner respectfully requests that the Board grant this Petition and
cancel Registration No. 3,679,578.

Dated: July 9, 2010

Respectfully submitted,


Francie R. Gorowitz, Attorneys for Petitioner
Negin Niknafs DBA The Hot Lunch Lady

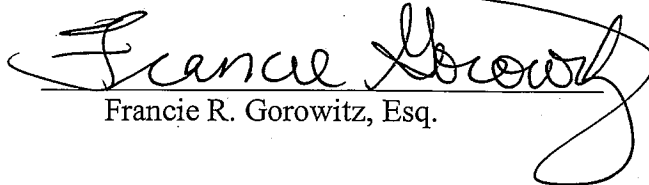
Rosenfeld, Meyer & Susman
9061 Wilshire Blvd. Suite 710
Beverly Hills, California 90121

Telephone: (310) 246-3205

Email: fgorowitz@rmslaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, PETITION FOR CANCELLATION, was served by depositing it with the United States Postal Service as first class mail in an envelope addressed to:
Valery Pine Behr, 531 Cherry Street, Boulder City Nevada 89005 on July 9, 2010.


Francie R. Gorowitz, Esq.